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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of June 15, 1974

between

AMERICAN FLETCHER LEASING CORPORATION

and

BURLINGTON NORTHERN INC.

INDEX

Lease

ARTICLE	PAGE
1. Delivery and Acceptance of Units.....	1
2. Rentals.....	2
3. Term of Lease	4
4. Identification Marks.....	5
5. Taxes.....	6
6. Payment for Casualty Occurrences; Insurance.....	7
7. Annual Reports	11
8. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.....	11
9. Default.....	13
10. Return of Units Upon Default.....	16
11. Assignment; Possession and Use	17
12. Return of Units upon Expiration of Term; Purchase and Renewal Options.....	19
13. Opinion of Counsel	21
14. Federal Income Taxes.....	23
15. Recording; Expenses.....	28
16. Interest on Overdue Rentals	29
17. Certain Conditions	29
18. Notices	30
19. Severability; Effect and Modification of Lease	31
20. Execution	31
21. Law Governing	31

LEASE OF RAILROAD EQUIPMENT, dated as of June 15, 1974, between AMERICAN FLETCHER LEASING CORPORATION, an Illinois Corporation (hereinafter, together with its successors and assigns, called the Lessor), and BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee).

WHEREAS, the Lessor has acquired or will acquire certain railroad equipment (the Hulks) from the Lessee pursuant to a Hulk Purchase Agreement dated as of June 15, 1974, between the Lessor and the Lessee (the Hulk Purchase Agreement);

WHEREAS, the Lessor has entered into a Reconstruction and Conditional Sale Agreement dated as of June 15, 1974 (hereinafter called the Reconstruction and Conditional Sale Agreement), with the Lessee and American National Bank and Trust Company of Chicago (hereinafter called the Vendor) as Agent under a Finance Agreement, dated as of the date hereof (hereinafter called the Finance Agreement);

WHEREAS, the Lessor desires to lease to the Lessee and the Lessee desires to lease from the Lessor the units of equipment to be constructed pursuant to the Reconstruction and Conditional Sale Agreement (such units being, after completion of such reconstruction, hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

WHEREAS in furtherance of the proposed financing, the Lessor intends to assign certain rights acquired under the Hulk Purchase Agreement to the Vendor, pursuant to a Transfer Agreement and intends to assign certain of its rights under this Lease to the Vendor pursuant to an Assignment of Lease and Agreement (hereinafter called the Lease Assignment), substantially in the form of Exhibit D to the Finance Agreement;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions;

§1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point within the United States of America at which such Unit is delivered to the Lessor under the Reconstruction and Conditional Sale Agreement. Upon such tender, the Lessee will immedi-

ately cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§2. *Rentals.* The Lessee agrees to pay to the Lessor (i) as rental for each Unit subject to this Lease two interim rent payments, the first payable on December 1, 1974, and the second payable on June 2, 1975 and (ii) as rental for each Unit subject to this Lease, 30 consecutive semiannual payments to be payable on June 1 and December 1 in each year, commencing December 1, 1975; *provided, however,* that if any of the payment dates referred to above is not a business day, the payment shall be payable on the next succeeding business day. The interim rental payment due December 1, 1974, shall be in an amount equal to the sum of (x) .0032224% of the Purchase Price (as defined in the Reconstruction and Conditional Sale Agreement) of each Unit subject to this Lease which shall have been delivered to and accepted by the Lessee prior to November 1, 1974 for each day elapsed from and including the date each such Unit is delivered to and accepted by the Lessee to and including November 1, 1974, (y) .199786% of the Purchase Price of each such Unit subject to this Lease which shall have been so delivered and accepted by the Lessee before November 1, 1974, plus (z) .0032224% of the Purchase Price of each Unit subject to this Lease for each day elapsed from and including the date each such Unit is delivered to and accepted by the Lessee to and including December 1, 1974, which Unit shall have been so delivered and accepted by the Lessee on or after November 1, 1974. The interim rental payment due June 2, 1975 shall be in an amount equal to the sum of (x) .0032224% of the Purchase Price of each Unit subject to this Lease for each day elapsed from and including the later of December 2, 1974, or the date each such Unit is delivered to and accepted by Lessee to and including January 3, 1975, which Unit shall have been so delivered and accepted by the Lessee on or after November 1, 1974, (y) .973150% of the Purchase Price of each such Unit so delivered and accepted hereunder on or after November 1, 1974 plus (z) 1.185825% of the Purchase Price of each Unit subject to this Lease which shall have been delivered to and accepted by the Lessee before November 1, 1974. The 30 semiannual rental payments, beginning December 1, 1975,

shall each be in an amount equal to that percentage of the Purchase Price of all the Units then subject to this Lease which is set forth below opposite the applicable Long Term Debt Rate. The Long Term Debt Rate shall be the rate per annum paid to the Investors as specified in Schedule A to the Supplemental Finance Agreement (referred to in the Finance Agreement).

<u>Long Term Debt Rate</u>	<u>Semiannual Rental Payment as Percentage of Purchase Price</u>
8¼%	4.952
8½	5.018
8¾	5.065
9	5.122
9¼	5.191
9½	5.255
9¾	5.319
10	5.384

The parties hereto agree that if the Long-Term Debt Rate shall not be one of the assumed Long-Term Debt Rates set forth above, the applicable rental percentage shall be calculated by the Lessor and the Lessee, substantially in the manner utilized in calculating the rental percentages in the foregoing table, to reflect the Long-Term Debt Rate.

Upon execution and delivery of the Supplemental Finance Agreement, this Lease shall be supplemented to set forth the semiannual rental payments, payable on each Payment Date.

In consideration of its rights hereunder, the Lessee also agrees to pay to the Lessor, as supplemental rental (i) on December 1, 1974, an amount equal to the interest payable by the Lessor to the Vendor on such date on the Conditional Sale Indebtedness (as defined in the Reconstruction and Conditional Sale Agreement), (ii) on the Commitment Fee Payment Date (as defined in the Reconstruction and Conditional Sale Agreement), such amount as shall be required in order to enable the Lessor to pay to the Vendor the Commitment Fee (as defined in the Reconstruction and Conditional Sale Agreement) and (iii) on June 2, 1975, an amount equal to the interest payable by the Lessor to the Vendor on such date on the Conditional Sale Indebtedness.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions, setoffs, counterclaims, recoupments, defenses or any other rights due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of failure of title of Lessor or any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, the Hulk Purchase Agreement or the Reconstruction and Conditional Sale Agreement or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§6, 9, 12, 14 and 17 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Reconstruction and Conditional Sale Agreement in its capacity as guarantor or otherwise, shall be subject to the rights of the Vendor under the Reconstruction and Conditional Sale Agreement after the execution and delivery thereof. If an event of default should occur under the Reconstruction and Conditional Sale Agreement, the Vendor may, to the extent provided therein, terminate this Lease (or rescind its termination), unless the Lessee is not so in default under this Lease or under the Reconstruction and Conditional Sale Agreement (in its capacity as guarantor or otherwise). If a Declaration of Default (as defined in the

Reconstruction and Conditional Sale Agreement) should be made under the Reconstruction and Conditional Sale Agreement due to an event of default which is occasioned solely by an act or omission of the Lessor hereunder or is attributable solely to the Lessor under the Reconstruction and Conditional Sale Agreement and which is not occasioned by an act or omission of the Lessee hereunder or thereunder and is not attributable to the Lessee under the Reconstruction and Conditional Sale Agreement as aforesaid, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 16 of the Reconstruction and Conditional Sale Agreement that it will not rescind such Declaration of Default, the Lessee, without penalty, may discharge the obligations of the Lessor to the Vendor under the Reconstruction and Conditional Sale Agreement and thereupon, terminate this Lease.

§ 4. *Identification Marks.* The Lessee, so long as this Lease shall remain in effect, will cause each Unit to be kept numbered with the identifying number set forth in Schedule A to the Reconstruction and Conditional Sale Agreement and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the words "Owned by American Fletcher Leasing Corporation, Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words indicating the interests of the Lessor and the Vendor therein, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor and the Lessor under the Reconstruction and Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited by the Lessee in all offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee, so long as this Lease shall remain in effect, will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor and to the Vendor for collection or other charges and will be free of expense to the Lessor and to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than any United States federal income tax [and, to the extent that the Lessor or Vendor receives credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor or Vendor, respectively, in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor or Vendor have their respective principal places of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Reconstruction and Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay on demand as supplemental rental in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly as supplemental rental all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor or the Vendor solely by reason of the ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Vendor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no

obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the advance opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Reconstruction and Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor or the Vendor directly and paid by the Lessor or the Vendor, the Lessee shall reimburse the Lessor or the Vendor, as the case may be, on presentation of invoice therefor. Prior to making such payment, the Lessor or the Vendor, as the case may be, shall promptly notify Lessee of the impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such impositions, at its sole expense.

In the event any reports with respect to impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor. The Lessee further agrees to furnish to Lessor, upon Lessor's request, all information reasonably necessary to allow Lessor to properly prepare and file its income tax returns with any state or political subdivision thereof.

In the event that, during the continuance of this Lease, any imposition accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§6. Payment for Casualty Occurrences; Insurance. In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the reasonable opinion of the Lessee or of a qualified representative of the Lessor or the Vendor, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (each such occurrence being hereinafter called a Casualty Occurrence) during the term of this Lease or during the time when such Units are being stored by the Lessee for the Lessor pursuant to § 12 hereof, the Lessee shall, within eight days after it shall have determined that such Unit has suffered a Casualty Occurrence,

fully notify the Lessor and the Vendor in writing with respect thereto. On the rental payment date next succeeding such notice (or promptly if such Unit is being stored pursuant to § 12 hereof), the Lessee shall pay to the Lessor a sum equal to the rental payment, if any, that would have been payable for such Unit on the date of such payment but for such Casualty Occurrence plus a sum equal to the Stipulated Loss Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the payment by the Lessee to the Lessor of an amount equal to the rental payment, if any, due on said date of payment plus the Stipulated Loss Value (which amount shall include any insurance proceeds or net condemnation proceeds, as hereinafter provided) in respect of any Unit, the rental, if any, for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and the Lessor shall be entitled to recover possession of such Unit.

The Stipulated Loss Value of each Unit as of any rental payment date shall be determined by multiplying the Purchase Price of such Unit by the applicable percentage set forth opposite the appropriate rental payment date and in the column representing the appropriate Long-Term Debt Rate, as set forth in the following schedule (except that the Stipulated Loss Value, as a percentage of Purchase Price, payable on December 1, 1974, and June 2, 1975, shall be 104% and 106%, respectively).

Semiannual Rental Payment Date No.	Percentage of Purchase Price Assuming Long Term Debt Rate of:		
	8¼%	8¾%	10%
1.....	105.6%	105.6%	105.6%
2.....	104.0	104.1	104.2
3.....	103.2	103.3	103.5
4.....	102.6	102.8	103.1
5.....	101.9	102.1	102.5
6.....	101.0	101.2	101.8
7.....	98.6	99.0	99.8
8.....	95.6	95.9	96.6
9.....	94.2	94.5	95.4
10.....	92.7	93.3	94.5

Semiannual Rental Payment Date No.	Percentage of Purchase Price Assuming Long Term Debt Rate of:		
	8¼%	8¾%	10%
11.....	91.6	92.3	93.6
12.....	87.4	88.1	89.6
13.....	86.1	86.8	88.4
14.....	84.7	85.5	87.2
15.....	81.1	81.9	83.7
16.....	76.2	77.1	78.9
17.....	74.2	75.1	77.0
18.....	72.0	72.9	74.8
19.....	70.4	71.3	72.3
20.....	66.7	67.6	69.5
21.....	62.9	63.8	65.8
22.....	59.0	59.9	61.7
23.....	54.6	55.4	57.2
24.....	49.9	50.7	52.3
25.....	44.4	45.1	46.6
26.....	38.6	39.2	40.5
27.....	33.1	33.5	34.4
28.....	28.9	29.1	29.9
29.....	24.4	24.6	25.1
30.....	19.8	19.9	20.2
Thereafter	15.0	15.0	15.0

The parties hereto agree that if the Long-Term Debt Rate shall not be one of the assumed Long-Term Debt Rates set forth above, the applicable Stipulated Loss Value (as a percentage of Purchase Price) shall be calculated by the Lessor and the Lessee, substantially in the manner utilized in calculating the Stipulated Loss Value (as a percentage of Purchase Price) in the foregoing table, to reflect the Long-Term Debt Rate.

Upon execution and delivery of the Supplemental Finance Agreement, this Lease shall be supplemented to set forth the actual Stipulated Loss Value (as a percentage of Purchase Price) payable on each interest payment date.

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in an amount and against risks comparable to those insured against by the Lessee on equipment owned by it and the benefits thereof shall be payable as provided in the Reconstruction and Conditional Sale Agreement. Moreover, the Lessee shall arrange for the Lessor to become a named insured under the Lessee's public liability insurance policy. The Lessee shall cause each such insurance policy issued pursuant to the immediately preceding sentence to provide, and the insurer issuing such policy to certify to the Lessor, that (i) the Lessor is an additional insured thereunder, (ii) all provisions of such policy, except the limits of liability, will operate in the same manner as if there were a separate policy covering each insured; (iii) if such policy be cancelled or materially changed for any reason whatsoever such insurer will promptly notify the Lessor and (iv) such cancellation or change will not be effective for 30 days after notice to the Lessor. The Lessee forthwith shall deliver to the Lessor copies of each such insurance policy (or a certificate of insurance relating thereto) and shall deliver copies of each renewal policy (or a certificate or other evidence of insurance relating thereto) prior to the expiration of the original policy or preceding renewal policy, as the case may be (provided, however, that the Lessee shall notify the Lessor in writing of the status of such insurance 30 days prior to the expiration thereof in the event it has not then delivered to the Lessor a renewal policy, or a certificate or other evidence of insurance relating thereto). Any net insurance proceeds as the result of insurance carried by the Lessee or net condemnation proceeds received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 6. If the Lessor shall receive any such net insurance proceeds or net condemnation proceeds after the Lessee shall have made payments pursuant to this § 6 without deduction for such net insurance proceeds or such net condemnation proceeds, the

Lessor shall pay such proceeds to the Lessee up to an amount equal to the Stipulated Loss Value with respect to a Unit paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

§7. *Annual Reports.* On or before March 31 in each year, commencing with the year 1975, the Lessee will cause to be furnished to the Lessor and the Vendor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Units then leased hereunder and/or covered by the Reconstruction and Conditional Sale Agreement, the amount, description and number of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease in the case of the first such statement) or which have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by §4 hereof and Article 9 of the Reconstruction and Conditional Sale Agreement shall have been preserved or replaced. The Lessor shall have the right, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such reasonable times as the Lessor may request during the continuance of this Lease.

§8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks are to be borne by the Lessee. The Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects with all laws of the jurisdictions in which the Units

may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws and rules so long as it is subject to this Lease; *provided, however,* that the Lessee, upon notice to the Vendor and the Lessor, may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor and the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Reconstruction and Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit and any and all parts, equipment and appliances installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Reconstruction and Conditional Sale Agreement) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Reconstruction and Conditional Sale Agreement or this Lease, the failure to comply with any laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads or with all lawful rules of the Department of Transportation or the Interstate Commerce

Commission or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Hulks or reconstruction thereof or over the Units, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return or abandonment of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. the Lessee shall fail to pay in full any sum payable by the Lessee when payment thereof shall be due hereunder and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions, warranties and agreements on the part of the Lessee contained herein or in the Reconstruction and Conditional Sale Agreement and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings (other than proceedings under Section 77 of the Bankruptcy Act) shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Reconstruction and Conditional Sale Agreement), unless such proceedings shall have been dismissed, nullified, stayed or other-

wise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), and all the obligations of the Lessee under this Lease and under the Reconstruction and Conditional Sale Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Reconstruction and Conditional Sale Agreement and this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings (whether or not subject to ratification) in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take

possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee: (1) as damages for loss of the bargain and not as a penalty the Stipulated Loss Value for each such Unit then subject to this Lease as of the rental payment date immediately preceding the occurrence of an Event of Default; *provided, however*, if the Lessor shall sell or lease such Units subsequent to payment by the Lessee pursuant to this clause (1), the Lessor shall pay to the Lessee the net proceeds from such sale or lease, *provided* that the amount so payable by the Lessor shall not exceed the Stipulated Loss Value received by the Lessor for each such Unit; and (2) all amounts, other than rentals, payable by the Lessee under §§6 or 9 or any other provision of this Lease and all damages and expenses, including reasonable attorneys' fees in addition thereto which the Lessor shall have sustained by reason of the breach of one or more of the representations, warranties and covenants (other than the covenant to pay rentals) made by the Lessee in this Lease (and from time to time after the date of such termination the Lessor may recover from the Lessee any and all additional such amounts, damages and expenses which may be payable by the Lessee or incurred or sustained by the Lessor), *provided, however*, that damages payable under clause (1) of this paragraph shall be in lieu of all other damages in respect of rentals and the loss of tax benefits payable pursuant to this §9(b).

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to §9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performances of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence (or to the extent otherwise provided by law) of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of

any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee; *provided, however,* that no such assignment (other than assignment provided for in the Lease Assignment) shall be effective if it would result in a relationship between the Lessee and the Lessor's assignee that is forbidden by Section 10 of the Clayton Act, and, *provided, further,* that the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including but not limited to, the rights under §§5, 6, 9, 14 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns. The Lessee agrees that upon the execution and delivery of the Lease Assignment, all rental and other payments due hereunder and assigned thereunder will be made to the Vendor at the address specified in the Lease Assignment. Whenever the term Lessor is used in this Lease it shall include any assignee of the Lessor in regard to the particular rights assigned.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but the Lessee shall not assign, sublease or otherwise transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Lessor, which consent shall be given if the Lessor is reasonably satisfied that the assignee, transferee or sublessee is a party which is as financially responsible as the Lessee and which can be expected to comply with all of the Lessee's obligations hereunder, including, without limitation, the Lessee's obligations to repair and maintain the Units. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit (including any accession thereto) or the interests of the Lessor, the Vendor or the Lessee therein. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's,

mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof. In the event that the Lessee assigns, subleases or otherwise transfers its leasehold interest in accordance with the first sentence of this paragraph, the Lessee shall, nevertheless, remain secondarily liable to the Lessor and the Vendor for all of its obligations, hereunder.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof upon its lines of railroad or upon the lines of any affiliate or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic, if customary at the time, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this § 11, and the Reconstruction and Conditional Sale Agreement. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations of the Lessee hereunder and under the Reconstruction and Conditional Sale Agreement) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the railroad properties of the Lessee as an entirety or substantially as an entirety, *provided* that such assignee or transferee will not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Lease.

The Lessee agrees that during the term of this Lease, (i) it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America, and (ii) any use of any Unit outside the United States of America will be limited to incidental and temporary use in Mexico and Canada.

§ 12. *Return of Units upon Expiration of Term; Purchase and Renewal Options.* Immediately after the expiration of the term of this Lease with respect to the Units, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of the Units to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate and permit the Lessor to store such Units on such tracks for a period not exceeding three months from the date such Units are delivered to the Lessor as hereinabove provided and transport the same, at any time (but not more than once) within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee as directed by the Lessor; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence (or to the extent otherwise provided by law) of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however,* that the foregoing clause shall not in any way relieve the Lessee of its obligations to make payments equal to the Stipulated Loss Value of any Unit experiencing a Casualty Occurrence pursuant to §6 hereof.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee or its successors or assigns may elect, by written notice delivered to the Lessor not less than six months prior to the end of the original term or any extended term of this Lease, as the case may be, (a) to extend the term of this Lease in respect of all but not fewer than all Units then covered by this Lease for a period of three years, commencing on the scheduled expiration of the original term of this Lease, for a period of two years, commencing on the scheduled expiration of the first extended term of this Lease, or for a period of one year, commencing on the scheduled expiration of any other extended term of this Lease, at a rental equal to the "Fair Rental Value" of such Units, payable in semiannual payments on June 1 and December 1 in each year of any such extended term, or (b) to purchase all but not fewer than all the Units then covered by this Lease at the end of the original term or any extended term of this Lease with respect to such Units for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If, on or before four months prior to the expiration of the applicable term of this Lease, the Lessor and the Lessee are unable to agree upon the determination of the Fair Market Value of the Units or the Fair Rental Value and Stipulated Loss Value of the Units, such Fair Market Value or Fair Rental Value and Stipulated Loss Value, as the case may be, shall be determined by a qualified independent Appraiser. The term Appraiser shall mean such independent Appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by

the Lessee and the third designated by the first two selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price in respect of Units that are purchased by the Lessee, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for the Units such as will transfer to the Lessee title to the Units, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

If this Lease is extended for any term subsequent to the original term hereof, all the provisions of this Lease shall apply during and until the expiration of such extended term, except that the rental and the Stipulated Loss Value of any Units then subject to this Lease shall be as provided in this §12.

§13. *Opinion of Counsel.* On each Closing Date (as defined in the Reconstruction and Conditional Sale Agreement), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. The Lessee is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware and has the power and authority to enter into the Reconstruction and Conditional Sale Agreement and this Lease and to own its properties and to carry on its business as now conducted;

B. The Reconstruction and Conditional Sale Agreement, this Lease, and the Hulk Purchase Agreement have been duly authorized, executed and delivered by the Lessee and, assuming due authorization, execution and delivery by the other parties, thereto, constitute valid, legal and binding agreements, enforceable in accordance with their terms; the Finance Agreement has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee, enforceable in accordance with its terms;

C. Security title to the Units is validly vested in the Vendor, free of all claims, liens, security interests and other encumbrances except only the rights of the Lessor under the Reconstruction and Conditional Sale Agreement, and the rights of the Lessee under this Lease;

D. The Reconstruction and Conditional Sale Agreement and this Lease (and any assignment hereof) have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and notice of such deposit given in *The Canada Gazette*, in accordance with said Section 86; and no other filing, deposit, or recordation is necessary for the protection of the rights of the Vendor and the Lessor thereunder or hereunder in any State of the United States of America or the District of Columbia or hereunder in Canada or any Province thereof;

E. No approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Reconstruction and Conditional Sale Agreement, the Hulk Purchase Agreement or this Lease (or any assignment hereof), or if any approval is necessary, it has been obtained;

F. There is no condition, restriction or requirement in the documents constituting the corporate charter of the Lessee relating to or affecting the execution and delivery by the Lessee of the Finance Agreement, the Hulk Purchase Agreement, the Reconstruction and Conditional Sale Agreement, or this Lease or the enforceability thereof or hereof in accordance with their terms or requiring any approval of stockholders in respect thereof or hereof;

G. The entering into and performance of the Finance Agreement, the Hulk Purchase Agreement, the Reconstruction and Conditional Sale Agreement or this Lease will not conflict with, or result in any breach of, or constitute a default under, any terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound;

H. No mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Hulks or the Units or in any manner affects or will affect adversely the Vendor's or the Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the leasehold rights of the Lessee under this Lease in and to the Units; and

I. At the time of delivery of the Units by the Lessee under the Reconstruction and Conditional Sale Agreement, such Units were free of all claims, liens, security interests and other encumbrances of the Lessee or of anyone claiming through the Lessee.

§14. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such credits, deductions and other benefits as are provided to an owner of property by the Internal Revenue Code of 1954 (hereinafter called the Code), including without limitation those items of credit and deduction set forth below, and the Lessee agrees that it will not claim such items as credits or deductions on its federal income tax returns or take any positions therein which are inconsistent with the ownership of the Units by the Lessor:

(i) the investment credit (herein called the Investment Credit) which is or would be available to the Lessor pursuant to Section 38 and related sections of the Code (as in effect on the date hereof) if it is assumed that the portion of the Purchase Price equal to the Reconstruction Cost (as defined in the Reconstruction and Conditional Sale Agreement) will qualify as "new section 38 property . . . placed in service by" the Lessor, having an "applicable percentage" of 100%, all within the meaning of Sections 46(c) and 48(b) of the Code, and will continue to constitute "section 38 property", within the meaning of Section 48(a) of the Code (as in effect on the date hereof), at all times during the term of this Lease;

(ii) the depreciation deductions (herein called the Depreciation Deductions) which are or would be available to the Lessor under Section 167 of the Code (as in effect on the date hereof), the Regulations under Section 167 (as in effect on the date hereof), including Regulations Section 1.167(a)-11, and Rev. Proc. 72-10, 1972-

1 C.B. 721, if it is assumed that the Units will at all times during the term of this Lease constitute "eligible property" within the meaning of Section 1.167(a)-11(b)(2) of said Regulations and that the Lessor will be entitled to take into account depreciation deductions (A) computed with respect to the portion of the Purchase Price equal to the Reconstruction Cost over the asset depreciation period of 12 years pursuant to the double declining balance method of depreciation for the first and second taxable years and the sum of the years' digits method of depreciation thereafter and (B) computed with respect to the portion of the Purchase Price equal to the Hulk Purchase Price (as defined in the Reconstruction and Conditional Sale Agreement) pursuant to the 150% declining balance method over the asset depreciation period of 12 years; in each case computing such deductions on the basis of the "half year convention" established in Section 1.167(a)-11(c)(2)(iii) of said Regulations, and computing such deductions to (but without taking into account) a salvage value of 15%, reduced to 5% pursuant to Section 167(f) of the Code; and

(iii) the deduction (herein called the Interest Deduction) in each taxable year of the Lessor for all interest paid or accrued during such year on the Conditional Sale Indebtedness (as defined in the Reconstruction and Conditional Sale Agreement), computed in accordance with Section 163 of the Code.

The Lessee represents and warrants that: (i) the Units, upon delivery to the Lessor, shall be "rolling stock, of a domestic railroad corporation subject to Part I of the Interstate Commerce Act" within the meaning of Section 48(a)(2)(B)(ii) of the Code, as in effect on the date of this Lease; (ii) the Units, upon delivery to the Lessor, shall qualify, with respect to that portion of the basis of the Units attributable to reconstruction, as "new Section 38 property" within the meaning of Section 48(b) of the Code, and reconstruction of no Hulk shall have commenced prior to the sale and delivery of such Hulk to the Lessor pursuant to the Hulk Purchase Agreement; (iii) the Lessor shall be entitled to claim, upon delivery of the Units to it, depreciation deductions with respect to that portion of the basis of the Units attributable to reconstruction in accordance with any methods listed in Section 167(b) of the Code and, with respect to that portion of the basis of the Units not attributable to reconstruction, in accordance with Section 167(a) of the Code; (iv) the portion of the basis attributable to reconstruc-

tion of each Unit shall be not less than the "Reconstruction Cost" set forth in Schedule A to the Reconstruction and Conditional Sale Agreement; (v) at the time of delivery of the Units to the Lessor, no investment credit, depreciation deductions, or other tax benefits will have been claimed by any person with respect to the portion of the basis of the Units attributable to reconstruction; (vi) the Lessee will not claim the investment credit or depreciation deductions with respect to any Unit after delivery thereof to the Lessor; and (vii) the Lessee currently estimates that the economic useful life of the Units will be at least 18 years, and the fair market value of the Units at the expiration of the original term of this Lease will be at least 15% of the Purchase Price thereof.

If (A) the Lessor shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture all or any portion of the Investment Credit, the Depreciation Deductions or the Interest Deduction (hereinafter each called a Benefit), as a result of (a) any breach of any representation or warranty of the Lessee set forth in this §14, or (b) any fault of the Lessee, including, but not limited to, (x) the inaccuracy or incompleteness of any statement in any letter or document furnished to the Lessor by the Lessee (or any officer, agent or employee thereof or of any affiliated company thereof) (y) the filing, by the Lessee, of documents or returns inconsistent with the Lessor's claims to the Benefits, or (z) the use of the Units by the Lessee in such a manner as to make the Units ineligible for the Investment Credit or any other Benefit or subject to recapture thereof or (B) if the Lessor shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of, any of the Depreciation Deductions, prior to the receipt of the Ruling (as hereinafter in this §14, defined) for any reason whatsoever (including, but not limited to a change in tax law or interpretation thereof), which does not prevent the Internal Revenue Service from issuing the Ruling; then, in any such event, the rental rate applicable to such Unit set forth in §2 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Benefit has not been claimed, or (if claimed and then disallowed or required to be recaptured) on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's discounted after-tax rate of return in respect of such Unit under this Lease to equal the discounted after-tax rate

of return in respect of such Unit under this Lease that would have been available if the Lessor had been entitled to utilization of all or such portion of the Benefit which was not claimed or was disallowed or required to be recaptured, and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be paid to the United States by the Lessor attributable to the disallowance, recapture or loss of all or any portion of the Benefit; *provided, however*, that such rental rate shall not be so increased to the extent (and only to the extent) that the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of any Benefit with respect to all or part of such Unit solely as a direct result of the occurrence of any of the following events ("Excluded Events"):

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under §6 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Unit (except the transfer or disposition contemplated by the Transfer Agreement or any assignment of this Lease as collateral security, to the Vendor) or the voluntary reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment either of the Hulk Purchase Agreement, the Transfer Agreement or the Reconstruction and Conditional Sale Agreement without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim the Investment Credit, the Depreciation Deductions or the Interest Deduction, as applicable, in its federal income tax return for the appropriate year, unless the failure to claim any such Benefit is based on an opinion of its independent tax counsel or independent certified public accountants that such Benefit may not reasonably be claimed, or the failure of the Lessor to follow proper procedure in claiming any Benefit (but for this purpose any procedure approved in writing by the Lessee or not objected to in writing by the Lessee within 30 days after receipt of written notice from the Lessor shall in any event be deemed a proper procedure);

(v) the failure of the Lessor to have sufficient liability for federal income tax against which to credit such Investment Credit or sufficient

income to benefit from the Depreciation Deductions or the Interest Deduction, as applicable;

(vi) any other fault of the Lessor which directly causes the loss of any of the aforesaid tax benefits; *provided, however*, that the execution and delivery of this Lease and the other documents herein referred to and the carrying out of the transactions contemplated herein and therein in accordance with the terms of this Lease and such other documents shall not be deemed to have caused the loss of such tax benefit under this clause (vi).

The Lessor agrees that if, in the opinion of its independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of any Benefit (with respect to part or all of any Unit) exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may, at its option, take such action prior to making payment pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax and interest paid attributable to the Benefit disallowed, required to be recaptured or lost, (which interest shall be computed at the Long Term Debt Rate from the date of payment of such tax and interest to the date the Lessee shall reimburse the Lessor for such tax). The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

In the event that this Lease is terminated with respect to any Units prior to the time the Lessee is obligated to pay increased rentals with respect thereto pursuant to the preceding paragraphs of this §14, then instead of paying such increased rentals, the Lessee shall pay to the Lessor, on the date such increased rentals would first have been payable if the Lease were in effect as to such Units, an amount which in the reasonable opinion of the Lessor will cause the Lessor's discounted after-tax rate of return in respect of such Units to be equal to the Lessor's discounted after-tax rate of return with

respect to such Units that would have been available if the Lessor had been entitled to the utilization of all or such portion of the Benefit which was not claimed or was disallowed or required to be recaptured, and on such date the Lessee shall also pay to the Lessor the amount of any interest paid to the United States by the Lessor attributable to the disallowance, recapture or loss of all or any portion of such Benefit.

The Lessor agrees to apply to the Internal Revenue Service for a favorable tax ruling (hereinafter called the Ruling) substantially to the effect that (i) this Lease is a lease for federal income tax purposes, (ii) the Lessor is entitled to the Interest Deduction, (iii) the Lessor is entitled to such depreciation deductions with respect to the Units as are available to an owner of property under Section 167 of the Code, (iv) the Lessor is entitled to such investment credits with respect to the Units as are available to an owner of property under Section 38 and related sections of the Code, (v) the Units will be treated as property "reconstructed by the Lessor" for purposes of Sections 48(b) and 167(c) of the Code, and (vi) the Lessee is entitled to deduct the rental payments pursuant to Section 162 of the Code. In the event that no Ruling is received by June 2, 1975, then on June 2, 1975 this Lease shall terminate, the Lessor shall transfer its interest in the Units to the Lessee, the Lessee shall assume the Lessor's obligations under the Reconstruction and Conditional Sale Agreement (without regard to the limitations set forth in Article 3 thereof), and the Lessee shall pay to the Lessor the amount computed in accordance with subparagraphs (a), (b), and (c) of §17 hereof, less an amount equal to the unpaid Conditional Sale Indebtedness, which shall be assumed by the Lessee; *provided, however*, that if the Lessor is advised by the Internal Revenue Service on or before December 31, 1974 that no favorable Ruling will be issued, then the aforementioned termination of this Lease, transfer of Units, assumption of obligations and payment shall take place on December 31, 1974, and the fee referred to in subparagraph (a) of §17 hereof shall be reduced to 1¼%.

§15. *Recording; Expenses.* The Lessee will cause this Lease, the Reconstruction and Conditional Sale Agreement and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in *The Canada Gazette*) pursuant to Section 86 of the Railway Act of Canada. The Lessee will from time to time do and perform

any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease or the Reconstruction and Conditional Sale Agreement; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Reconstruction and Conditional Sale Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The provisions for payment of expenses set forth in Article 19 of the Reconstruction and Conditional Sale Agreement are incorporated by reference herein.

§16. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations when due hereunder shall result in the obligation on the part of the Lessee promptly to pay on the overdue rentals, to the extent legally enforceable, an amount of interest at the rate per annum set forth in Article 3 of the Reconstruction and Conditional Sale Agreement, applicable to amounts remaining unpaid after becoming due and payable, for the period of time during which they are overdue.

§17. *Certain Conditions.* The Lessor and Lessee acknowledge that 70% of the Purchase Price (as defined in Article 3 of the Reconstruction and Conditional Sale Agreement) of the Units, is being financed by the Lessor under a Finance Agreement, dated as of the date hereof, among the Lessor, the Lessee, American National Bank and Trust Company of Chicago and a certain Interim Investor. Pursuant to this plan of financing, it is contemplated that the interest of the Interim Investor in the Conditional Sale Indebtedness (as defined in the Reconstruction and Conditional Sale Agreement) will be purchased by a limited number of institutional investors or other financial institutions (the Investors) on June 2, 1975 (the Takeout Date) and that thereafter, the rentals payable under §2, hereof, shall be adjusted to reflect the applicable Long Term Debt Rate paid to such Investors. In the event that by the Takeout Date the interest of the Interim

Investor has not been purchased by the Investors, then on the Takeout Date this Lease shall terminate, the Lessor shall transfer its interest in the Units to the Lessee, the Lessee shall assume the Lessor's obligations under the Reconstruction and Conditional Sale Agreement (without regard to the limitations set forth in Article 3 thereof), and the Lessee shall pay to the Lessor:

(a) the Purchase Price of all Units then subject to this Lease (which the Lessor shall use, in part, to prepay the Conditional Sale Indebtedness under the Reconstruction and Conditional Sale Agreement) plus a fee equal to 1½% of \$5,362,980.

(b) all of the Lessor's out-of-pocket costs and expenses incurred in connection with this transaction; and

(c) such amount as, when added to the net rentals received by the Lessor (after payment of interest on the Conditional Sale Indebtedness) under §2 hereof, shall be required to enable the Lessor to realize a rate of return of 14% per annum (computed without regard to the 1½% fee received by the Lessor under subparagraph (a) of this §17) on the amounts invested by it under subparagraph (a) of the third paragraph of Article 3 of the Reconstruction and Conditional Sale Agreement.

§18. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 100 South Wacker Drive, Chicago, Illinois 60606, Attention: Ramiro Collazo, Vice President; and

(b) if to the Lessee, at 176 East Fifth Street, St. Paul, Minnesota 55101;

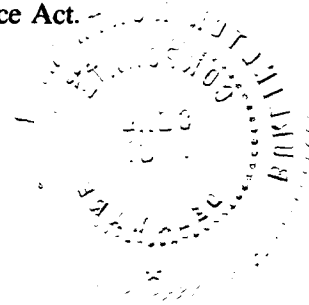
or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

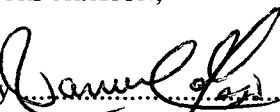
§20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of June 15, 1974, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§21. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.




IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

AMERICAN FLETCHER LEASING
CORPORATION,

by 
Vice President.

[CORPORATE SEAL]

Attest:

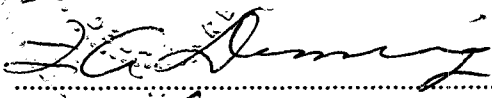

ASSISTANT Secretary.

BURLINGTON NORTHERN INC.,

by 
Vice President.

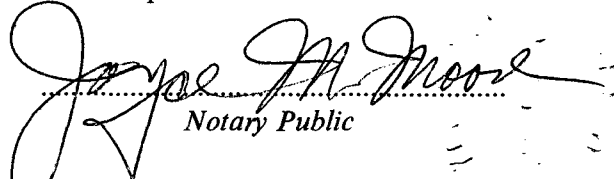
[CORPORATE SEAL]

Attest:


Asst. Secretary.

STATE OF ILLINOIS }
COUNTY OF COOK } SS.:

On this 25th day of June, 1974, before me personally appeared RAMIRO COLLAZO, to me personally known, who, being by me duly sworn, says he is a Vice President of AMERICAN FLETCHER LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was this day signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

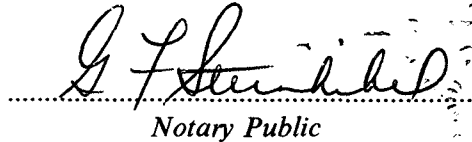

Notary Public

[NOTARIAL SEAL]

My Commission Expires 6-31-77

STATE OF MINNESOTA }
COUNTY OF RAMSEY } SS.:

On this 25 day of June, 1974, before me personally appeared W. K. Bush, to me personally known, who, being by me duly sworn, says that he is a Vice President of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that such instrument was this day signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

[NOTARIAL SEAL]

My Commission Expires

G. F. STEINHIBEL
Notary Public, Ramsey County, Minn.
My Commission Expires Mar. 16, 1979

SCHEDULE A

Description of Equipment

<u>Quantity</u>	<u>Category and Description of Equipment</u>	<u>Lessee's Road Numbers (both inclusive)</u>	<u>Unit Purchase Price</u>	<u>Aggregate Purchase Price</u>
300	40' Narrow Door Box Cars AAR Mechanical Designation XM Box	BN 161900- 162199	\$ 10,734	\$3,220,200
60	40' Wide Door Box Cars AAR Mechanical Des- ignation XM Box	BN 199140- 199199	14,358	861,480
100	50' Wide Door Box Cars AAR Mechanical Des- ignation XM Box	BN 247200- 247299	12,813	1,281,300
<u>460</u>				<u>5,362,980</u>